

**DECISION**



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P.L.I.  
Limited

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE: B-201872

DATE: June 8, 1981

MATTER OF: CDR Precision Machining, Inc.

**DIGEST:**

1. Bid which effectively reserved right of bidder to increase bid price in event bidder was charged for specified property is nonresponsive.
2. Allegations that contracting officer should have extended bid opening and assisted bidder to obtain information on certain property which bidder planned to use in performing contract are untimely since bases of protest were known no later than actual bid opening date but protest was filed more than 10 working days after date. See 4 C.F.R. § 20.2(b)(2) (1980).

CDR Precision Machining, Inc. (CDR), protests the rejection of its bid under invitation for bids (IFB) No. DAAE07-80-B-C010 issued by the United States Army Tank Automotive Command. The IFB called for the supply of several hundred wheel track hubs for use on M60 tanks.

Fifteen bids were received by the Army on December 8, 1980. CDR submitted the apparent low bid; however, on the face of its bid CDR stated:

"Price based on rent-free use  
of government subsidized forging dies  
(Alcoa Die #14617) located in Cleveland,  
Ohio, ALCOA Forging division."

Because of the above qualifying statement, CDR's bid was determined to be nonresponsive. Therefore, award was made to the second low bidder. Based on our review of the record, we deny the protest.

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CDR contends that the Army should not have determined its bid to be nonresponsive because of the Army's alleged lack of cooperation in the company's attempt to obtain information on the Alcoa forging die. Specifically, CDR alleges that prior to bid opening it made a written request to the contracting officer for the rent-free use of this die which it believed to be Government-owned; CDR also asked for assistance in obtaining certain information needed to comply with IFB clause L14, "Use of Existing Government-owned Property." CDR alleges that the contracting officer failed to assist it in response to both requests.

The Army points out that under clause L14 the bidder was required to provide with its bid the following information in order that a proper bid evaluation could be performed, namely: description of the property; location of the property; identification of the facilities contract under which the property was held; identification of the contract item which the property would be used to produce; the amount of use in months the property would be required in order to perform any resulting contract; the amount of rent which would be charged if rent-free use were not permitted; and the written permission of the contracting officer having cognizance of the property authorizing use of the property without charge. The Army states that CDR's request for rent-free use was submitted on December 3, 1980, only days prior to bid opening and contained only a description of the Alcoa die and its location. Without the additional information required by clause L14 of the IFB (which CDR never provided) the Army argues that it could not be determined whether the die was, in fact, owned by the Government or whether the contracting officer to whom the request had been addressed had cognizance over the die.

The Army also states that prior to bid opening an Army employee suggested that CDR obtain the required information from its proposed subcontractor--Alcoa. CDR was also advised that unless written authorization for rent-free use was obtained and submitted with the bid, CDR should not "predicate its bid on rent-free use." Further, the Army notes that at no time did CDR request that the bid opening date be extended.

Finally, the Army reports that the die in question has been found, upon investigation, to be owned by Alcoa which had given Chrysler Defense Inc., the third low bidder under the IFB, the exclusive use of the die. Chrysler, the Army understands, "refused to provide permission [to CDR for use of the die] since Chrysler was competing with CDR for this bid."

In response, CDR contends that the contracting officer should have automatically extended the bid opening date and attempted to assist CDR in obtaining the information it needed. CDR further asserts that if the Army in the course of providing assistance had ascertained that the Alcoa die was not Government-owned, CDR could then either have "reconstructed [its] bid or have left it the same" without having to state that its price was based on the rent-free use of the Alcoa die.

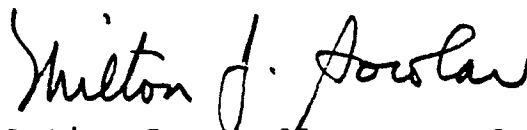
It is axiomatic that the responsiveness of a bid is to be determined within the confines of the bid itself without resort to extraneous explanations submitted by the bidder. 45 Comp. Gen. 221 (1965). Therefore, we reject CDR's view that the question whether its bid is responsive should take into account its dealings with the Army prior to bid opening.

It is also axiomatic that a bid which reserves the right to increase the price quoted must be rejected as nonresponsive. See Re Con Paving, Inc., B-198294, April 24, 1980, 80-1 CPD 297. Although CDR erroneously assumed the die was Government-owned, the fact remains that the provision effectively reserved CDR's right to increase its price in the event it did not obtain the specified property without cost regardless of the identity of the actual owner of the property. Therefore, its bid was properly rejected as nonresponsive.

As to CDR's position that the contracting officer should have automatically extended the bid opening date and assisted CDR prior to bid opening in obtaining the information it needed in order to comply with clause L14 of the IFB, we believe that the protest concerning these issues was untimely filed under our Bid Protest Procedures (4 C.F.R. part 20 (1980)).

CDR had knowledge of both these issues no later than December 8, the date of bid opening. Nevertheless, the issues were not made the subject of a protest to our Office until January 1981 or more than 10 working days after December 8. Consequently, these issues were untimely filed and will not be considered. See 4 C.F.R. § 20.2(b)(2) (1980).

The protest is denied in part and dismissed in part.

A handwritten signature in cursive script, reading "Milton J. Fowler".

Acting Comptroller General  
of the United States